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In The

Supreme Court of the United States

OCTOBER TERM, 1985

ROBERT G. BARON,

Petitioner,

vs.

ANDREW P. MELONI, INDIVIDUALLY AND AS SHERIFF OF THE COUNTY OF MONROE, AND THE COUNTY OF MONROE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONSE TO BRIEF IN OPPOSITION OF RESPONDENT COUNTY OF MONROE

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On Petition for a Writ of Certiorari To the United States Court of Appeals Second Circuit

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Response To BRIEF IN OPPOSITION OF RESPONDENT COUNTY OF MONROE

POINT I

Petitioner, Robert G. Baron, was exonerated in his Departmental Hearing of Discrediting the Sheriff's Department and Associating with a Person of Ill Repute.

> "The charges against Deputy Baron stem from the March 22 accident and subsequent newspaper coverage. They will be treated in inverse order.
>
> As noted above, Charge 3 claims a violation of Section IV "General Conduct," paragraph 4.2 entitled "Consorting with Persons of Ill Repute."...
>
> ...By what means, by what standards and most importantly by whose standards is one to determine that Linda Vaccaro is a person of ill repute or of questionable character? None of these questions may be answered by a resort to the Department's rules and regulations.
>
> Clearly, the Sheriff has a legitimate interest in regulating the conduct of his officers, both on and off duty. As noted hereafter, this may include some restraints on the First Amendment right of association, which could not otherwise apply to ordinary citizens. But a restraint, to be enforced, must be capable of understanding and application. The subject regulation provides no more guidance to the Sheriff's deputy than it does to this trier of fact.
>
> On two distinct grounds the regulation may thus be constitutionally infirm:
>
> (1) vagueness and
> (2) overbreadth

> Charge 2 against Deputy Baron claims a violation of Section IV "General Conduct," paragraph 4.1 entitled "Conduct Not to Discredit the Department."....
>
> The same constitutional infirmities which may attach to Section IV, paragraph 4.2 may attach to this section.....

The Hearing Officer then goes on to state...

> "While the orders when issued had a reasonable basis, it does not appear <u>from the record before me</u> that they continue to have such a basis."..."it is difficult to invision any interest that the Department can continue to have in restraining Deputy Baron's right to associate with her."

POINT II

Petitioner's work capability was not affected. By his association with Linda Vaccaro. The hearing officer stated:

> "Moreover, no proof has been adduced to suggest that Deputy Baron's performance as a deputy has been impaired by virtue of his association with Mrs. Vaccaro. On the contrary, his peers have testified that he was performing well in his duties on the road patrol, and as noted above has recently received an affirmative evaluation from his superior officers."...

The question then arises as to whether the order he disobeyed was reasonable or unreasonable?

All of Sheriff Meloni's testimony as to the reason for the order places it squarely on the

allegations that petitioner was associating with a person of ill repute and thus bringing discredit on the Sheriff's Department. If we rule out both the reasons for the order, as the Hearing Officer did, then there remains no reasonable basis for the order which petitioner admits he disobeyed.

POINT III

The Sheriff also states in his deposition that petitioner had access to sensitive information which he has not challenged to be fact or untruth. This and any statement referring to knowledge of the Sheriff's Department, Organized Crime Task Force, or the like were disputed by the Sheriff's own Chief of Detectives Anthony Yazbach, whom identified himself, at the time of the hearing, as the direct liaison between the Sheriff's Department, the District Attorney's Office, and the Organized Crime Task Force since the Task Force was formed in 1978, two years prior to Meloni becoming Sheriff.

Snyder: But, if he has nothing to tell Angelo Vaccaro, as you said, he knew nothing about what was going on, where is the danger of a breach of security?

Yazback: I don't know. I don't know.

In the deposition of Sheriff Meloni, he stated:

Q: But you have nothing to show any specific attempts to exploit Deputy Baron by members of organized crime.

A: I have nothing to suggest that that has occurred....

POINT IV

Respondents brief alleges an adulterous relationship between Petitioner and Linda Vaccaro, although no such proof was ever introduced, and is only introduced at this time to cast a shadow on Petitioner and raise a question of morality.

POINT V

In 1980, there was no reconciliation contemplated between Linda Vaccaro and Angelo

Vaccaro although such fact is alleged in Respondent's Brief. The long delay referred to in Respondent's Brief between Petitioner's discharge, Linda's final divorce decree based on abandonment for over one year and Petitioner's marriage to Linda was two months and six days.

POINT VI

The decision does conflict with a decision of another Court of Appeals.

WILSON v TAYLOR 733 F.2d. 1539, held that the police officer's association with the women he was dating was a constitutionally protected right. The respondent alleges that the difference between the two cases is that in this case Petitioner associated with a person of ill repute and that he brought discredit on the Department. He was exonerated of both of these charges and thus the only difference between the two case is that in Wilson v. Taylor the police officer associated with the daughter of a convicted organized crime figure, released from custody pending an appeal and in this

case Petitioner associated with the estranged wife of a convicted imprisoned organized crime figure.

CONCLUSION

Petitioner urgently requests that the Court read the full record of this case as it will substantiate all of Petitioner's arguments.